

**CONTRACT NUMBER: PON2-725 0800008665 (HEALTH)**

**KIPDA  
KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY  
11520 Commonwealth Drive  
Louisville, KY 40299**

**PROGRAM SERVICE CONTRACT**

THIS AGREEMENT, made and entered into as of the **first day of July, 2009** by and between Kentuckiana Regional Planning and Development Agency, hereinafter referred to as KIPDA, and

**Louisville Jefferson County Metro Government  
By and Through the Department of Public Health and Wellness  
400 East Gray Street  
Louisville, KY 40202**

hereinafter referred to as the Second Party,

**WITNESSETH THAT:**

Whereas, KIPDA, in the exercise of its lawful duties, and pursuant to a contract between KIPDA and the Commonwealth of Kentucky, Cabinet for Health and Family Services, hereinafter referred to as the Cabinet, has determined upon the necessity of the performance of the following functions briefly described as follows and detailed in the Scope of Work (Attachment A) and Budget (Attachment B) contained as attachments and made a part of this contract:

Whereas, the Second Party is available, willing and qualified to perform some or all of these functions, and KIPDA desires that the Second Party perform the services, as indicated in the attached Scope of Work and Budget Attachment, KIPDA and the second Party agree as follows:

**INTRODUCTORY TERMS:** The Second Party shall not commence any billable work until a valid contract has been fully executed. The availability of funding and authorization to provide services is contingent upon the availability of fund to KIPDA through the Cabinet for Health and Family Services, or other sources identified in the Attachment B budget or authorization to conduct services based on the decisions of the KIPDA Board of Directors. Prior negotiations, representations or agreements, either written or oral, between the parties hereto relating to the subject matter shall be of no effect upon this contract. Federal and/or State funding to perform the services described in this contract have been awarded to the Second Party by the KIPDA Board of Directors in the amount identified in the **Budget Attachment B** for the fiscal year period, **July 1, 2009 – June 30, 2010**. The terms of this contract may be extended or amended in accordance with KRS Chapter 45A and authorization by KIPDA. This contract may be renewed at the completion of the contract period, through the end of the procurement period established for funded services, contingent upon the availability of funds, satisfactory performance of services and approval by the KIPDA Board of Directors.

KIPDA reserves the right not to exercise any or all renewal options. KIPDA further reserves the right to extend the contract for a period less than the length of the above-referenced renewal period if such an extension is deemed to be in the best interest of KIPDA.

**I. THE SECOND PARTY AGREES TO PERFORM THE SERVICES AS HEREINAFTER DESCRIBED WITH PARTICULARITY AS FOLLOWS:**

- (1) Provide services as required by a Title III and Title VII Grant from the United States Department of Health and Human Services (DHHS), Administration on Aging pursuant to the Older Americans Act of 1965, as amended;
- (2) Provision of services through Center for Medicare and Medicaid Services (CMS) for State Health Insurance Assistance Program (SHIP) providing health information, counseling and assistance to eligible persons;
- (3) Provision of services authorized by the Kentucky General Assembly through State General Funds (Homecare, Adult Day Care, Personal Care Attendant Program, Long Term Care Ombudsman program and KY Caregiver Program) and other programs subsequently authorized through State General Funds; and

NOW, therefore, it is hereby and herewith mutually agreed by and between the parties hereto as follows:

**II. SCOPE OF WORK:**

**A. THE SECOND PARTY AGREES TO PERFORM THE SERVICES DESCRIBED AS FOLLOWS;**

1. Assure compliance with the special requirements as mandated by funding source.
  - i. Assure compliance with all federal and state licensure or certification requirements and standards for all contracted services and advise KIPDA when such compliance is not met;
  - ii. Assure that all services under this contract are provided and maintained on a continuing basis throughout the fiscal year, subject to availability of funds provided by the Department for Aging and Independent Living or other funding sources;
  - iii. Assist KIPDA, upon request, in training related to services, regulated agency skills and resources under this contract;
  - iv. Assure compliance with 910 KAR 1:140 and KIPDA policies and procedures regarding Fair Hearing Process;

- v. Assure that no other funds or assets of the Second Party shall be co-mingled with the funds provided for these programs to be administered under this contract to any other program account, and that these funds shall not be utilized for any purposes except those specifically identified herein.

## **B. SUBCONTRACTS**

The Second Party understands and agrees that all requirements of this contract shall apply to subcontractors and that subcontractors shall be required to report to the Second Party in a manner to meet the Second Party's reporting and audit requirements to KIPDA. Upon written request of the Second Party and for good cause shown, one or more requirements of this contract may be waived by KIPDA in writing as not applicable to subcontractors. The Second Party agrees as follows:

- (1) Assure that funds obligated under this Agreement will be available for the provision of services by an agency, organization, or individual other than the Second Party only after the Second Party has secured prior written approval from KIPDA, subject to such additional conditions and provisions as KIPDA and the Cabinet may deem necessary.
- (2) Before entering into subcontracts, the Second Party agrees to execute a written contract with the subcontractor binding the subcontractor to the same requirements imposed upon the Second Party by this contract.
- (3) The Second Party will provide KIPDA with copies signed by the Second Party and its subcontractors of all subcontracts initiated under the terms of this contract within 20 days after entering into the approved subcontracts.
- (4) The Second Party is responsible for fulfillment of the terms of this contract. The terms of this contract are binding upon the Second Party and all subcontractors. The Second Party is responsible for monitoring to ensure subcontractors comply with the terms of this contract through monitoring and adequate oversight of activities.
- (5) The Second Party to this agreement understands, and agrees to so advise its subcontractors, that both Second Party and its subcontractors are responsible for compliance with criminal records checks requirements under KRS 216.793, ensuring that staff and volunteers are properly trained and qualified to perform said services and will maintain documentation to validate training in accordance with KIPDA policies and procedures.

- (6) This agreement is a subcontract of the contract between KIPDA and the Cabinet through the Master Agreement established by the Cabinet and awarded to KIPDA for SFY 2010, and thereafter as applicable (#PON2 -725 0800008665). The Second Party shall cite this contract number in all subcontracts.
- (7) In the event that a firm fixed rate subcontract is preferable to a cost reimbursement contract and is a cost-effective method of subcontracting, the Second Party is authorized to enter into a fixed rate subcontract. In no event shall KIPDA be responsible should the subcontractor incur costs in excess of reimbursements received under such a fixed rate contract. Also, in no event shall KIPDA require repayment of any surplus funds received over expenditures, subject to verification of the delivery of appropriate services to eligible clients and satisfaction of all applicable Federal and State laws, regulations, policies, and provisions of this contract. Amendment to such a fixed rate subcontract would require prior written approval by KIPDA.
- (8) In accordance with 45 CFR Parts 74 and 92, no member of the Second Party's Board of Directors shall participate in the selection, or in the award or administration of a contract supported by Federal or State funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: a) the employee, officer, or agent; b) any member of his or her immediate family; c) his or her partner; or d) an organization which employs, or is about to employ, any of the above, has a financial interest in the firm selected for award.
- (9) Plans to subcontract any of the provisions of this agreement must be set forth in the Second Party's proposal for the delivery of products or services and included in the referenced Attachment(s). The subcontractor must make available to the Second Party and to the Cabinet, if requested, copies of personnel records, and documentation of subcontractor's compliance with the terms and conditions of this agreement as required for the Second Party.
- (10) Any subcontractor, their agent, and any of their employees who enter into any type of agreement to fulfill the requirements of this contractual agreement with the Second Party, must provide written assurances that they and any of their agents will abide by the terms of confidentiality as set forth in this agreement, as well as any federal or state confidentiality agreements which may govern the terms and conditions of this agreement.

### **C. AVAILABILITY OF INFORMATION**

During the period of this Agreement, the Second Party and its subcontractors performing services under this contract shall:

- (1) Provide information, within the timeframes established and requested by KIPDA or the Cabinet, concerning all activities performed pursuant to this contract. Additionally, data collected and provided to or by KIPDA shall be used solely for the purposes intended or otherwise expressly authorized in this Agreement.
- (2) Insure that program data to be entered and submitted electronically by the Second Party to KIPDA is completed on the schedule and in the format prescribed by the KIPDA or the Cabinet.
- (3) The Second Party agrees to permit staff of KIPDA, the Cabinet for Health and Family Services and/or staff designated by appropriate federal agencies to monitor and evaluate services, supports or activities being performed under the provisions of this contract. The Second Party also agrees to submit all records and documentation of such in a format prescribed by KIPDA or the Cabinet. The Second Party shall receive no further remuneration for participation in the monitoring process.

### **D. PERSONNEL POLICIES AND PROCEDURES**

- (1) The Second Party shall maintain written personnel policies and procedures and adhere to Federal and State wage and hour laws and travel limitations. In its policies and procedures, it shall include salary, conditions of employment, qualification requirements, and job descriptions relative to all personnel, including individuals from whom services are contracted other than on a full-time basis and/or secured by process other than direct employment. In the event personnel changes occur, KIPDA will be notified in writing and staff with similar qualifications will replace the vacant position.
- (2) The Second Party shall provide or arrange for appropriate insurance coverage to protect volunteers from personal liabilities.

### **E. AUDITS**

The Second Party shall comply with audit requirements as set forth by OMB Circulars if applicable or audit requirements set forth by the Cabinet for Health and Family Services as follows:

- (1) If the Second Party is a non-federal governmental entity, an institution of higher education or other nonprofit institution, the Second Party shall procure an audit in accordance with the United

States Office of Management and Budget (OMB) Circular A-133, as amended, Government Auditing Standards (GAS), Generally Accepted Auditing Standards (GAAS). See current requirements at: <http://www.whitehouse.gov/omb/circulars/index.html>.

- (2) If the Second Party receives \$50,000 or more in state funds to perform the following services: HomeCare, Adult Day Care/Alzheimer's Respite or Personal Care Attendant Program, the Second Party shall procure a financial and compliance audit of these funds.
- (3) The Second Party is required to provide, at a minimum, a final financial report for each program when the entity is not subject to an audit. under E.1 or E.2.
- (4) The Certified Public Accountant engaged by the Second Party shall conduct an independent audit of the Second Party's financial and other records for the period for which this contract is in effect as required in paragraphs E.1 and E.2.
  - a. The Audit Report shall contain a supplemental schedule representing final expenditure reports for each program (i.e., Title III, HomeCare Adult Day/Alzheimer's Respite, or Personal Care Attendant Program) funded through this contract. The schedules shall be in the format that the Second Party uses to report to KIPDA. The auditor must issue an opinion on these supplemental schedules.
  - b. Any deviation from requirements as set forth in the Cabinet's Aging regulations, contract requirements and applicable federal requirements which in the judgment of the independent auditor, relate to substantive program or financial matters, shall be included in the Audit Report.
- (5) The Second Party is responsible for the review and follow-up of any issues identified in all subcontractor audits.
- (6) Additional audit report requirements applicable to **Fixed Unit Price Contracts** - in addition to audit requirements contained herein, the audit shall note that the following procedures have been performed:
  - a. Testing of client records to verify actual delivery of service units as reported to KIPDA.
  - b. Assurance that all direct service employees paid in whole or in part through this contract meet minimum training standards as set forth in the *KIPDA Policies and Procedures Manual*.

- c. Assurance that reported services and units of services meet minimum standards for payment of each funded Service as set forth in this contract and the *KIPDA Policies and Procedures Manual*.
- (7) The Second Party shall submit one copy of all audits, including the final expenditure reports reconciled with the audit, properly certified by the Independent Auditor, to KIPDA not later than (90) days after the ending date of this contract or upon completion of any organization wide audit conducted in accordance with OMB Circular A-133 as amended or other applicable requirements for the organization. KIPDA shall have the right to deny payment for noncompliance with this provision. KIPDA may, at its discretion, procure an audit or review of provider records.
- (8) The Second party shall submit an original and one copy of all final expenditure reports for Second Party's and subcontractors that are not subject to an audit, not later than (30) days after the ending date of this contract. KIPDA shall have the right to deny payments for noncompliance with this provision.
- (9) If the Second Party is required to have an audit performed as required under the terms of this contract, a copy of the engagement letter shall be submitted to KIPDA, 11520 Commonwealth Drive, Louisville, KY 40299 three months prior to the year end or no later than March 31, 201009. If the Auditor of Public Accounts (APA) is to perform the audit, the name of the APA auditor and the anticipated start date shall be submitted no later than March 31, 2010.
- (10) The Second Party is responsible for implementing corrective measures to remedy any noncompliance with any law, regulation, audit requirement or generally accepted accounting principle relating to the services and deliverables. Such corrective measures also apply to any findings identified during a monitoring or review of services, deliverables and records related to the funding and services included in this contract. Further, the Second Party shall bear the expense of compliance with any finding or noncompliance noted during an audit, review, investigation or monitoring.

#### **F. INDIRECT ADMINISTRATIVE COSTS**

- (1) **Definitions:** As used in this Provision, shall apply to cost reimbursement contracts, unless the specific context dictates otherwise.

- a. "Direct Costs" means those costs that can be identified specifically with and charged in whole or in part to a particular project, service, program or activity of an organization.
- b. "Indirect Costs" means those costs of an organization not specifically identifiable with a particular project, service, program, or activity but nevertheless are necessary to the general operation of the organization and the conduct of the activities it performs.
- c. "Administrative Activities" means those activities performed by an organization in the development and implementation of policy and the management of the organization necessary to fulfill the functions and obligations of the organization. These activities generally include, but are not limited to, agency and personnel management, accounting, auditing, and legal services.
- d. "Service Activities" means those activities carried out by an organization which are integral and necessary to the production and/or delivery of specific products and/or services.
- e. "Indirect Administrative Costs" means those costs for administrative activities of an organization which are not specifically identifiable with a particular project, service, program or activity.
- f. "Cost Allocation Plan" means the written description of processes for identification, accumulation, and distribution of costs together with the allocation methods used.

**(2) Allocation Plan Required**

- a. The Second Party shall maintain a written plan for allocation of direct and/or indirect costs in instances where the Second Party organization operates more than one (1) project, services, program or activity. The general requirement for any cost allocation plan is that it shall provide for an equitable distribution of allocable direct costs and indirect costs to each project, service, program or activity that benefits from such costs. The cost allocation plan must be consistently and uniformly applied except where it is determined to be in the best interest of KIPDA and contract provisions specifically exempt a particular fund source. Only those costs that are not specifically identifiable to a single



project, service, program or other direct activity shall be allocated.

- b. In the event a Second Party has a cost allocation plan in operation accepted and approved by the Second Party's cognizant federal agency, KIPDA will recognize such cost allocation plan as applicable for purposes of recording and reporting reimbursable costs to the extent that such costs are allowable. Acceptance of such plan by KIPDA is contingent on compliance by the Second Party with all federal and/or state laws, regulations, and rules applicable to the various programs/activities funded by KIPDA and, further, that an audit will be completed and reported to KIPDA which will include a statement as to the Second Party's compliance with the indirect administrative cost limitations set forth in this provision.

**(3) Documentation Requirements for Costs**

- a. All direct or allowable direct charges shall be documented by appropriate source documents to support the direct charging of the expense.
- b. The Second Party shall document the method used to allocate direct and/or indirect costs.
- c. The Second Party shall indicate the allowable indirect administrative cost amount and the percentage such amount represents in each contract budget and/or the final expenditure report as an indication of compliance. If the Second Party is operating under a cost allocation plan as described in Section 3.B., then the amount and percentage of indirect administrative cost will be reported in the required audit. The Second Party shall also maintain source documents sufficient to validate match reported and that match is allowable in accordance with Federal match requirements.
- d. Reports of audits performed to meet federal and/or state requirements and which are conducted by independent public auditors, Cabinet auditors, and/or the State Auditor, shall contain a statement as to the compliance of the Second Party with the cost limitations set forth herein.

**G. MONITORING**

- (1) KIPDA will monitor the Second Party for compliance with the terms and conditions of this contract and compliance with applicable Federal and State laws governing this award. The Second Party will

be responsible for resolving and monitoring fiscal and/or program findings established as a result of evaluations, monitoring and/or audit of this contract and will promptly settle any monitoring, fiscal and program audit exceptions in a method established or approved by KIPDA and the Cabinet. Resolutions may include, but not be limited to direct payment for disallowed costs or reduction of future reimbursements should the exception include disallowed costs. Further, the Second Party will be responsible for monitoring the delivery of services of its subcontractors working in any capacity in the delivery of services under this contract.

- (2) The Second Party will respond to monitoring reports submitted by KIPDA by submission of and compliance with a Corrective Action Plan based on monitoring results and findings.
- (3) The Second Party will permit staff of KIPDA, persons acting for KIPDA, and staff designated by appropriate federal or state agencies to monitor and evaluate services performed pursuant to this contract. The Second Party also agrees to submit all records and documentation of service provisions in regard to contracted and subcontracted services when requested for monitoring purposes.

#### **H. EQUIPMENT AND FURNITURE**

- (1) With prior written approval by KIPDA, the Second Party may purchase or lease equipment and/or furniture necessary to provide the services set forth in this Agreement as described by KIPDA and the Cabinet for Health and Family Services in accordance with State and Federal Guidelines.
- (2) The Second Party shall obtain written approved from KIPDA for equipment or furniture purchased or leased even if approved in the Second Party's budget. Approval shall be granted for equipment or furniture with a single unit cost of \$500 or more.

The request shall include:

- a. Type of equipment or furniture (brand/model);
- b. Cost;
- c. Where equipment/furniture will be located and who will use it;
- d. Justification for purchase;
- e. Indication of whether the purchase is to replace broken or lost equipment or furniture.

- (3) The Second Party shall send all furniture and equipment invoices to KIPDA with an adequate description of the item purchased, serial numbers and the cost. A property tag will be provided consistent with the guidelines of the Cabinet for Health and Family Services. The Second Party shall notify KIPDA immediately if the item purchased becomes lost, is stolen or is damaged.

## **I. INVENTORY**

- (1) The Second Party shall affix a property tag, to be provided by KIPDA, to each piece of equipment or furniture purchased with funds from this contract with a single unit price of \$500 or more.
- (2) The Second Party shall maintain a property control ledger or log which lists all equipment or furniture purchased or leased with funds from the contract. The log or ledger shall contain: the property tag number; equipment serial number; description of the item; unit invoice price; date of purchase and location of item.
- (3) Annually, the Second Party shall complete a physical inventory on all equipment/furniture purchase through this contract and update the control ledger or log. The property ledger/control log shall be updated annually. During the course of the physical inventory; any items not found shall be identified to KIPDA with the following information: The last time the item was in use by or in possession of staff; documentation verifying efforts to recover the equipment or furniture; if items are declared stolen, submit a copy of a police report the division by completing a police report and submit to KIPDA. KIPDA will provide information the Cabinet as required under its Master Agreement with the Cabinet.

## **J. EQUIPMENT RETENTION/SURPLUS**

- a. The Department for Aging and Independent Living retains the right to ownership and physical possession of all equipment and furniture purchased with funds through this contract.
- b. The Second Party shall notify KIPDA in writing within 30 calendar days when any of the following occurs:
  - i. The equipment or furniture purchased or leased is no longer needed by the Second Party and is available for surplus
  - ii. The equipment or furniture is transferred from one inventoried location to another;
  - iii. The contract/agreement is terminated; or
  - iv. The period of the contract expires and will not be renewed.

## **K. PURCHASING AND SPECIFICATIONS**

The Second Party certifies that the Second Party will not attempt in any manner to influence any specifications to be restrictive in any way or respect, nor will the Second Party attempt in any way to influence any

purchasing of services, commodities or equipment by the Commonwealth of Kentucky.

#### **L. CONFIDENTIALITY and COMPLIANCE WITH HIPAA**

The Second Party and its subcontractors agree to the confidentiality of all information whether written or verbal, provided by or about any client seeking or receiving services under this master agreement, except as approved and authorized in writing by the client or as otherwise authorized by law, including the Privacy Act of 1974 (P.L. 93-579; 5 USC 552A) and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (P.L. 104-191), and the regulations promulgated under those statutes. The Second Party shall provide documentation to KIPDA that subcontractors or staff employed to perform the scope of work as detailed in this Agreement have signed confidentiality agreements and are on file with the Second Party. KIPDA (covered entity under HIPAA) and the Second Party (Business Associate under HIPAA) shall protect the security, confidentiality and integrity of PHI (Private Health Information). This would include any form of information on a client, personnel or individual including paper records, oral communications, audio recordings, electronic displays, etc.

The Second Party shall abide by State and Federal rules and regulations governing access to and use of information and data provided for collection of data to KIPDA or CHFS and will use such information or data only for those purposes expressly delineated, defined and authorized in the contract. In the performance of services under this contract, the Second Party agrees as follows:

1. The Second Party shall cause all personnel who may have access to confidential information provided by KIPDA or CHFS to enter into approved confidentiality agreements and shall maintain such confidentiality agreements on file. KIPDA and CHFS reserve the right to direct the removal from contract administration or the termination of access to information or data for any individual covered by this contract who has not signed a confidentiality agreement.
2. Any subcontractor, their agent, and any of their employees who enter into any type of agreement to fulfill the requirements of this contractual agreement with KIPDA, must provide written assurances that they and any of their agents will abide by the terms of confidentiality as set forth in this contract.
3. Any dissemination of information about projects funded and the scope of work described in the terms and conditions of this contract, must be fully documented and reviewed by the Director of Social Services before any representation, electronic or otherwise, of projects, their funding sources, use of data, data analyses may be posted to a web page or otherwise published.

4. The Second Party shall permit unrestricted access on demand to KIPDA, personnel of the Cabinet, the Office of the Attorney General, the Office of the Auditor of Public Accounts and any representative of a government funding agency authorized to review records for audit or investigation purposes to its current policies and procedures for ensuring compliance with these confidentiality requirements, the confidentiality agreements with its personnel, and subcontractor confidentiality assurances.

#### **M. HIPAA CONFIDENTIALITY COMPLIANCE**

The Second Party agrees to abide by the "HIPAA Privacy Rule," 45 CFR Parts 160 and 164, established under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 USC 1320d) to protect the security, confidentiality, and integrity of health information. KIPDA, is a covered entity and the Second Party, is a Business Associate, under the HIPAA Privacy Rule. The Second party agrees to use and disclose Protected Health Information only in accordance with HIPAA Privacy rules as follows:

1. To use or disclose Protected Health Information (PHI) solely for meeting its obligations under this Agreement or as required by applicable law, rule or regulation, or by accrediting or credentialing organizations to whom KIPDA is required to disclose such information or as otherwise is permitted under this Agreement or the HIPAA Privacy Rule;
2. To implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted by this Agreement;
3. To take reasonable steps to ensure that its employees' actions or omissions do not cause a breach in terms of the HIPDAA Privacy Rule;
4. To make available PHI to the extent and in the manner required by Section 164.524 for purposes of accounting of disclosures in accordance with Section 164.528 and for amendment and incorporation of any amendments in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule;
5. To ensure that its agents, including subcontractors abide by the same restrictions and conditions concerning PHI contained in this contract, and that any subcontract entered into contain this requirement.

6. To report to the Cabinet any use or disclosure of PHI of which it becomes aware that is not in compliance with the terms of this contract; and
7. To return or destroy copies of PHI upon request of the Cabinet or KIPDA or upon termination of this Agreement. If such return or destruction is not feasible, the Second Party shall extend the protections of this contract to such information and limit further uses and disclosures to those purposes that make its return or destruction not feasible.

KIPDA shall have the right to audit the Second Party's HIPAA Privacy Rule compliance and appropriately authorized officials shall have the right to audit the Second Party's records and practices related to use and disclosure of PHI to ensure the Cabinet's and KIPDA's compliance with the HIPAA Privacy Rule. In the event that either party to this contract believes that any provision fails to comply with the then current requirements of HIPAA Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concerns and amend the terms of this contract if necessary, to bring it into compliance. If after such thirty-day period, the contract fails to comply with the HIPAA Privacy Rule, then either party has the right to terminate upon written notice to the other party.

#### **N. GRIEVANCE PROCEDURES**

The Second Party shall assure that clients aggrieved by actions arising from services rendered under this contract shall have the right to a hearing. Such assurance shall include an opportunity for an aggrieved client to request a hearing and to be heard by the Second Party, and shall include the right of appeal to KIPDA and then to the Cabinet's Department for Aging and Independent Living if the grievance is not resolved to the client's satisfaction by the Second Party, in accordance with State Fair Hearing requirements.

#### **O. CODE OF ETHICS**

The Second Party and all personnel who may provide services under this contract, or any subcontract, with the Second Party, shall be familiar with and abide by any code of ethics or conduct which has been established by a national or regional association and its generally recognized as being applicable. Failure of the Second Party to abide by the applicable code of ethics may result in the immediate termination of the master agreement.

#### **P. CONFLICT OF INTEREST**

The Second Party agrees to comply with the provisions of KRS 45A.455 as applicable and Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c).

**Q. INDEMNIFICATION**

- (1) The METRO GOVERNMENT agrees to indemnify, defend and hold harmless KIPDA, and its agents, officers and employees from all claims and suits for loss of or damage to property, including the loss of use thereof and injuries to or death of persons; including the property of, officers and employees of the METRO GOVERNMENT; and from all judgments recovered therefrom, and from expenses in defending said claims, or suits, including court costs, attorney's fees and other expenses, caused by any negligent act or omission of the METRO GOVERNMENT, its officers and employees, and not caused by the sole fault or negligence of the KIPDA, or its respective agents, officers and employees. The METRO GOVERNMENT agrees to require its subcontractors to indemnify KIPDA, and its respective officers, agents and employees under the same terms as METRO GOVERNMENT is agreeing to indemnification of KIPDA, and its respective officers, agents and employees in this Section.
- (2) Pursuant to Ordinance No. 11, Series 2003, the Metro Government is self-insured for all properly asserted General Liability claims brought against it to which the Metro Government does not otherwise have a legal defense. In addition, the Metro Government agrees to keep in full force and effect Excess Self insurance coverage for all properly asserted claims brought against it to which the Metro Government does not otherwise have a legal defense, covering bodily injury, property damage, and personal injury liability under the "Louisville Area Governmental Self Insurance Trust," as along as such coverage is available. The limit of liability provided by such Excess coverage shall be at least \$1,000,000 per occurrence under a combined single limit format. The Metro Government agrees to provide KIPDA and the Cabinet with a Certification of Self Insurance from the Louisville Area Governmental Self Insurance Trust.

**R. INSURANCE AND BONDING REQUIREMENTS**

- (A) The Second Party will assure that a Fidelity Bond has been properly executed to ensure that any employee(s) who is (are) authorized to receive or deposit funds, issue financial documents, checks or other instruments of payment for programs costs shall be bonded against loss of sufficient amounts of funds; the bond should be sufficient to cover maximum sums handled quarterly under this contract; and a copy must be provided to KIPDA no later than forty-five (45) days from the effective date of the contract.

- (B) During the term of this contract, the Second Party shall maintain and shall require any subcontractor to maintain liability insurance for its directors and officers, workers' compensation, employer liability insurance and such other liability insurance as reasonably necessary in the Second Party's best judgment to provide adequate coverage against losses and liabilities attributable to the respective acts or omissions of the Second Party, its subcontractors in the performance of this contract. A certificate of insurance shall be made available to KIPDA and if requested, the Cabinet, within (30) days of commencement of this contract and shall be retained for the duration of this contract. Self-insured parties shall provide a certification as to adequate coverage against losses and liabilities attributable to the respective acts or omissions of the Second Party or its subcontractors.

## **S. SPECIAL REQUIREMENTS**

The Second Party shall:

- (1) Assure compliance with the special requirements as mandated by each funding source and as contained in Attachments or approved proposals incorporated herein by reference.
- (2) Assure compliance with all federal and state licensure requirements and standards for all contracted services and advise KIPDA when such compliance is not met. Ensure that all staff maintain appropriate licenses or certifications as required for the program under which the staff person(s) work.
- (3) Assure that all contracted services are provided and maintained on a continuing basis throughout the fiscal year.
- (4) Assist KIPDA and the Cabinet's Department for Aging and Independent Living, upon request, in training involving contracted services and related agency skills and resources.
- (5) Assure compliance with Hearing Procedures adopted by KIPDA.
- (6) Assure compliance with the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended.
- (7) Assure the retention of client-specific clinical records in a secured location for five (5) years after the last date of service and their subsequent destruction by shredding or burning.
- (8) Assure that upon termination of this agreement, copies of all client records and/or participant data shall be provided to the succeeding



service provider designated by KIPDA within two (2) weeks of the date of termination.

- (9) Assure that the provisions of 900 KAR 1:070, Deaf and Hard of Hearing Services, as relates to KRS 12.290, 29 U.S.C. 794, 42 U.S.C. 12101 et seq. Statutory Authority: KRS 194.050, KRS 12.290 will be complied with.
- (10) The Second Party agrees that any formulae, methodology, other reports and compilations of data provided by the Cabinet to the Second Party for the purposes of meeting the terms and conditions of this agreement, or as developed, prepared or produced by the Second Party for use by the Cabinet under the scope of services of this agreement shall be the exclusive property of the Cabinet. Any use of this material for purposes other than those specifically outlined and authorized by this agreement without prior approval and without appropriate acknowledgement of the funding source, shall be grounds for immediate termination of this agreement and possible criminal prosecution.
- (11) Data collected and provided by the Cabinet or KIPDA shall not be used for any purpose other than those expressly authorized in this Agreement.
- (12) KRS 45A.485 requires the Second Party to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Second Party within the previous five (5) year period of the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342. These statutes relate to the state sales and use tax, corporate and utility tax, wages and hours laws, occupational and safety and health laws, unemployment insurance laws, and workers' compensation insurance laws.

To comply with the provisions of KRS 45A.485, the Second Party shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination. KRS 45A.485 also provides that, for the duration of any contract, the Second Party shall be in continuous compliance with the provisions of those statutes which apply to the Second Party's operations, and that the Second Party's failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the Second Party's disqualification from eligibility for future state contracts for a period of two (2) years.

The Second Party shall not have violated any of the provisions of the above-referenced statutes within the previous five (5) year period.

- (13) The Second Party shall provide evidence of maintenance of appropriate liability insurance to cover the services of or the personnel provided under the terms and conditions of this agreement.
- (14) As applicable, if the Second Party is awarded American Recovery and Reinvestment Act of 2009 (ARRA) funds, these funds are awarded to only provide additional Title III-C meals and meal services. Refer to Section V. (S). of this contract for specific guidelines on use of and reporting of these funds.

**T. ALLOWABLE COSTS**

The Second Party will adhere to the provisions of 45 CFR Part 74 and/or Part 92, as applicable, as the basis for determining allowable costs, unless otherwise approved by the Cabinet and specified in this contract.

**U. LOCAL MATCH/VERIFICATION OF REQUIRED MATCH**

- (1) Local Match, if required, is shown on the Budget Attachment.
- (2) Match will be verified as allowable and consistent with regulations regarding match as a part of the Second Party's audit when subject to an audit under OMB Circular A-133, or as stipulated for programs funded with State Funds.

Match will be verified by certified statements for those programs not subject to audits.

If a combination of the above circumstances exists, then a combination of audit and certified statements shall be necessary to verify the adequacy of match.

- (3) Match verification documents shall be completed by subcontractors and submitted to the Second party when applicable. KIPDA retains the right to request these documents.
- (4) Match may include local cash, program income (Home care only), in-kind third party contributions, un-reimbursed expenditures, corporate funds or assets.
- (5) In-kind shall be defined as stated in Title 45 CFR Part 92.24, and it's application shall be subject to applicable portions of this

regulation, OMB Circulars A-87, A-122, A-133 and contractual provisions.

- (6) Program income and local cash shall be used to purchase additional program services.
- (7) Program income collected or received at any site may be retained and utilized to expand allowable program services as approved by KIPDA or submitted to KIPDA at the discretion of KIPDA.

**V. NOTICES, ADVERTISEMENTS AND PAMPHLETS**

All notices, advertisements, informational pamphlets, research reports, employment notices and similar public notices prepared and released by the Second Party, pursuant to this contract, shall be provided to the KIPDA Director of Social Services and shall include a statement identifying the appropriate source of funds for the project or service, including, but not limited to, identifying whether the funding is in whole or in part from federal, CHFS or other state funds. Funds are authorized through this contract by KIPDA through funds awarded by the Cabinet for Health and Family Services (State funds) or through the Kentucky Cabinet for Health and Family Services with funds from the U.S. Department of Health and Human Services (Federal funds).

**W. NOTICES REGARDING THIS CONTRACT**

Notices or communications regarding this contract shall be submitted in writing directly to KIPDA Director of Social Services and shall be deemed given to KIPDA when delivered to the appropriate address by hand, US Postal Service and prepaid courier service; sent by facsimile with confirmation of transmission by transmitting equipment, sent electronically with notice of receipt maintained by the transmitting party and personal delivery. Such notices shall be deemed effective three (3) calendar days after it is placed in the mail, transmitted or delivered to the recipient with transmission confirmed.

**X. CLIENT SATISFACTION SURVEY**

By the 31st of December, 2009, the Second Party will provide the completed client satisfaction surveys to KIPDA for tabulation and compilation. Where appropriate, KIPDA, under special circumstances, may permit the Second Party to conduct its own client satisfaction surveys with tabulated results submitted. At any time, in addition to prescribed satisfaction surveys, the Second Party may conduct other surveys outside of the standardized client satisfaction survey at its discretion.

**Y. OPEN RECORDS/ACCESS TO RECORDS, BOOKS AND DOCUMENTS**

The Second Party shall comply with the Open Records Law, KRS 61.870 to 61.884. The Second Party also agrees that KIPDA, the CHFS and other Federal grantor agencies, their duly authorized officials, including independent auditors shall have access to any books, documents, papers and records of the Second Party and its subcontractors which are directly pertinent to this contract for the purpose of making an audit, examination, excerpts and transcriptions.

**Z. COMPLIANCE WITH APPLICABLE FEDERAL AND STATE LAWS AND REGULATIONS**

The Second Party agrees to comply with all applicable Federal and State laws and Regulations for services provided under this contract, including but not limited to 45 CFR 74 & 92, and Circular OMB A-87 and A-133 and other applicable OMB circulars applicable to the operations of the Second Party.

**AA. DISCRIMINATION PROHIBITED (BECAUSE OF RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, AGE OR DISABILITY)**

During the performance of this contract, the Second Party (the contractor) agrees as follows:

- (1) The Second Party will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The Second Party further agrees to comply with the provisions of the Americans with Disabilities ACT (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Second Party agrees to provide needed reasonable accommodations upon request. The Second Party will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, age or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Second Party agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- (2) The Second Party will, in all solicitations or advertisements for employees placed by or on behalf of the Second Party, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, sex, age, or disability.

- (3) The Second Party will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract, or understanding; a notice advising the said labor union or workers' representative of the Second Party's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Second Party will take such action with respect to any subcontract or purchase order, as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
- (4) The Second Party will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The Second Party will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their or his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Second Party's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Second Party may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Second Party will include the provisions of paragraphs (1) through (7) of Section 202 of Executive Order No. 11246 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor, issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Second Party will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Second Party becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency,

the Second Party may request the United States to enter into such litigation to protect the interest of the United States.

- (8) The Second Party agrees to comply with all applicable federal and state laws and regulations pertaining to the recognition and protection of the civil rights of persons to whom services are rendered and to applicants for such services during the performance of this contract.
- (9) The Second Party agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and all implementing regulations and executive orders. No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in relation to activities carried out under this contract on the basis of race, color, age, religion, sex, disability or national origin. This includes the provision of language assistance services to individuals of limited English proficiency seeking and/or eligible for services under this contract.

**Section 601 of Title VI of the Civil Rights Act of 1964, (42 U.S.C. 2000d)**, provides that no person shall "on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

**Limited English Proficient (LEP) Individuals are defined as:** Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English at a level that permits him or her to interact effectively with health and social service agencies and providers. LEP individuals may be eligible to receive language assistance with respect to a particular type of services, benefit or encounter.

As a recipient of federal funds, the Kentucky Cabinet for Health and Family Services is obligated to provide **meaningful access** for Limited English Proficient (LEP) individuals to all programs and services within the Cabinet, directly or through contractual or other arrangements. As a sub-recipient of federal funds through KIPDA provided through the Kentucky Cabinet for Health and Family Services, your agency must ensure meaningful access by providing language assistance services that result in accurate and effective communication at no cost to LEP clients, patients, and/or beneficiaries.

- (10) The Second Party agrees to comply with the provisions of Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, and the Americans with Disabilities Act of 1990 (ADA), PL-101-336 and applicable federal regulations relating thereto prohibiting discrimination against

otherwise qualified disabled individuals under any program or activity receiving federal financial assistance.

The Second Party agrees to comply with the provisions of 900 KAR 1:070, Deaf and Hard of Hearing Services, as relates to KRS 12.290, 29 U.S.C. 794, 42 U.S.C. 12101 et seq., Statutory Authority: KRS 194.050, KRS 12.290.

## **BB. COORDINATION AND TRAINING ACTIVITIES**

The Second Party shall coordinate services funded under this contract with KIPDA, the Cabinet's Department for Aging and Independent Living, other subcontractors, the local and state ombudsman programs, and long term care facilities. Attendance at KIPDA sponsored trainings/meetings is required at certain times. KIPDA will notify subcontractors of the number and type of staff required to attend these mandatory trainings/meetings sponsored by KIPDA. The Second Party agrees to coordinate its services, resources and information with organizations identified as partner organizations

## **CC. CHANGES IN SITES, SERVICES and STAFF**

The Second Party shall obtain **prior** approval for any deletion, addition, or substantive change in service sites, hours/days of operation and/or services outlined in the approved proposal through submission of a written request for consideration to the Director of Social Services. As appropriate, the Department for Aging and Independent Living or other governing body may be also required to grant approval for certain site changes and alterations

The Second Party shall submit to KIPDA notice in writing of any vacancy, addition, or substantial change in staff who provide oversight of programs or perform services affecting this contract. Staff replacing the vacant position shall possess similar or higher qualifications of the individual previously employed in the vacant position.

## **II. PAYMENTS:**

Payments to the Second Party relative to the performance of services described herein shall not exceed the amounts shown on **Budget Attachment B**. The period within the current fiscal year in which the subject services are to be performed is from **July 1, 2009, to June 30, 2010**. It being understood that this agreement is not effective and binding until approved by the First Party.

- A.** The amount represented for Federal and State-funded programs may include both the Federal and/or State amounts awarded and match to be provided through local sources. The gross total includes local match, if applicable. The gross unit price includes local match, if applicable.

Refer to Budget Attachment B representing services funded and the maximum amount approved.

- B. The total obligation of KIPDA under this contract shall be contingent upon receipt of sufficient Federal funds and State General funds necessary to finance the services described in this contract.
- C. Payment to the Second Party shall be made in accordance with the Budget Attachment and payable upon receipt of appropriate, acceptable, and timely billings. Timely is defined as receipt of billing report and entry of data by the 6<sup>th</sup> day of each month, unless prior authorization is granted for an extension.
- D. Reports shall be signed by the individual who signed this contract unless said person notifies KIPDA that the reports will be signed by a specified individual within the Second Party's organization by submission to KIPDA of a Signature Authorization Form.
- E. Payment by KIPDA to the Second Party shall be made only after approval and signature of the contract, applicable amendments and receipt of an accurate and original signed invoice.
- F. KIPDA may make an interim payment (advance installment) of up to one-twelfth (1/12) of the funds eligible for such advancement or as arranged for Homecare and Adult Day Care programs upon proper submittal of the Request for Advance form and availability of funds from the Cabinet. The Second Party shall hold such funds in a special account, and shall execute a suitable bond or insurance contract providing for full repayment to KIPDA where advance money has been disbursed in violation of this contract. The Second Party shall not make a final effective disbursement of any such advance funds until services have in fact been rendered. Subsequent reimbursement shall be made on a monthly basis upon submittal of the Monthly Service Provider Financial Report.
- G. The Nutrition Services Incentive Program (NSIP) shall not receive an advance installment from KIPDA. Reimbursement of actual and allowable expenditures shall be made in accordance with the approved amount for this service and payable upon receipt of appropriate billing report(s).
- H. Payment is contingent upon the Second Party's continued satisfactory performance throughout the duration of this contact, as determined by KIPDA. It is expressly understood that KIPDA retains the right to withhold payment under the contract to the Second Party if the Second Party:
  - (1) fails to comply with any of the terms of this contract.
  - (2) fails to comply with a Corrective Action Plan.



(3) fails to comply with any of the terms of a previous years contract.

- I. Federal and State share of a project cost is earned only when the cost is accrued and/or service provided and the non-federal and non-state share of the cost has been contributed. Receipt of Federal and/or State funds (either through advance or reimbursement) does not constitute earning of these funds. Failure of the Second Party to provide and certify the required local match will result in a proportionate reduction of the Federal or State allotment. For the HomeCare project state cost is not earned until the total required match is provided.
- J. For cost reimbursement contracts, the Second Party shall submit a cost allocation plan for KIPDA's approval should the Second Party choose to charge indirect or allocated costs to any or all KIPDA programs. Failure to meet the "Federal Financial Participation" or "State Financial Participation" requirements for allowable costs will result in requirements to refund such ineligible costs. KIPDA also retains the right to withhold payments of these charges should the Second Party fail to submit and receive approval of their cost allocation plan. Any funds remaining unencumbered for allowable expenditures upon confirmation of final closure of audit of the contract shall be refunded to KIPDA (or final expenditure report if no audit is required). Cost reimbursement contracts are paid base on actual and allowable costs incurred, up to the amount awarded and referenced in the contract budge and with proper supporting documentation to validate costs incurred.
- K. Any interest income earned by the Second Party on any portion of the funds paid under this agreement shall be used to expand services in the programs in which the interest is earned. It is also expressly understood that if the interest income is not expended for services in the same fiscal year in which it is earned, the funds shall be returned to KIPDA. No carry-over of funds shall be permitted.
- L. Payment by KIPDA shall be made only after receipt of appropriate, acceptable, and timely bills for actual work performed are submitted to KIPDA by the Second Party. Payment by KIPDA to the Second Party, as well as the Second Party's continued performance of programmatic services and fiscal reporting, shall be subject to the availability of local agency or governmental funds, or state or federal funds necessary to finance the performance of the services described in this agreement. The Second Party shall have no right of action against KIPDA or the Cabinet in the event that KIPDA or the Cabinet are unable to perform its obligations under this contract due to suspension, termination, withdrawal or lack of sufficient funds to perform services. Invoices, if requested (backup supporting documents at the very least) shall contain:
  - 1. Description of the services performed;
  - 2. Itemized statement of costs for a cost reimbursement contract;
  - 3. Dates and hours, if applicable, of the services provided; and

4. Other information as required in this contract.

KIPDA shall pay the Second Party for benefits accrued during the contract period only in accordance with the approved budget and shall not be liable for benefits accrued prior to the beginning of or after the end of the contract period. All invoices for benefits, including sick, compensation, and annual leave time must be submitted prior to the contract expiration date to be considered appropriate, acceptable and timely.

### **III. FINANCIAL MANAGEMENT SYSTEM**

**A.** The Second Party agrees to establish and/or maintain a financial management system to support the following requirements:

- (1) Accurate, current, and complete disclosure of the financial results of the functions/services performed under this contract in accordance with reporting requirements set forth in this contract and its attachments;
- (2) Records that identify the source and application of funds for activities/functions/services performed pursuant to this contract. These records shall contain information pertaining to federal and/or state funds received, match, obligations, un-obligated balances (if applicable), assets, liabilities, expenditures, and program income;
- (3) Effective control over and accountability for all funds, property, and other assets. The Second Party shall safeguard all such assets and shall assure that they are used solely for authorized purposes in the provision of functions/services under this contract. Pursuant to 45 CFR Part 74.21 (b) (3), funds in financial institutions in excess of the FDIC insured amount shall be collateralized.
- (4) Maintain procedures for ensuring compliance with the guidelines for allowable costs found in the applicable documents: OMB Circular A-21 cost Principles for Education Institutions; OMB Circular A-87 Cost Principles for State, Local and Indian Tribal Governments; OMB Circular A-122 Cost Principles for Non-Profit Organizations; and the administrative requirements of OMB Circular A-110 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations; OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations; and the federal agency's grant management Common Rule.
- (5) Accounting records that are supported by source documentation and application of funds for activities using the electronic data system, functions and services performed pursuant to the services identified in this contract. The records shall contain information pertaining to

federal and/or state funds received, obligations, un-obligated balances (if applicable), assets, liabilities, expenditures and income.

- B. The Second Party agrees that the requirements contained in this contract shall also be applicable to subcontractors and that subcontractors shall be required to report to the Second Party in a manner which will meet the Second Party's reporting requirements to KIPDA and the Cabinet.

**IV. IN RELATION TO THE AGREEMENT, KIPDA AGREES TO PERFORM THE FOLLOWING FUNCTIONS:**

- A. Provide consultation and technical assistance to the Second Party as deemed necessary for assisting in the performance of responsibilities and duties under this contract.
- B. Conduct periodic evaluations of the Second Party to assess the implementation of its approved proposal and applicable service objectives for Title III, HomeCare, Adult Day Program, NSIP, Personal Care Attendant Programs, and other programs as deemed necessary by KIPDA.
- C. Monitor and evaluate the activities of the Second Party and its programs performed pursuant to this contract; and in conjunction with the Second Party,
  - (1) Keep the Second Party informed of findings.
  - (2) Conduct on-site visits to observe activities funded under this contract.
- D. Provide or arrange for training to the Second Party as deemed necessary by KIPDA. Cost of training may be the responsibility of the Second Party.
- E. Maintain policies and procedures to assist in the implementation of Older Americans Act programs (Title III) and State-funded services (Homecare, Adult Day Care, Personal Care Attendant Services, Long Term Care Ombudsman Services) and other appropriate programs that KIPDA deems necessary, and furnish such policies and procedures in writing to the Second Party. Provide training for the Second Party in understanding the policies and procedures as requested by the Second Party.
- F. Notify the Second Party by Certified Mail, Return Receipt Requested, if a request for transfer of all equipment and/or supplies regardless of value is necessary.
- G. Respond to requests from the Second Party with regard to contract and program questions, requests for approval for any deletion, addition, or substantive change in service sites, hours/days of operation and/or services outlined in the approved proposal.

## **V. GENERAL TERMS AND CONDITIONS**

### **A. SOCIAL SECURITY**

The parties to this agreement are cognizant that neither KIPDA nor the Cabinet are liable for Social Security contributions pursuant to 42 U.S. Code, Section 418, relative to the compensation of the Second Party during the period of this agreement.

### **B. EXTENSIONS/AMENDMENTS/MODIFICATIONS**

The terms and conditions of this agreement may be extended or amended at any time by mutual agreement of the parties in writing. No modification or change of any provision in the contract shall be made or construed to have been made unless written approval or amendment is granted by KIPDA. If the Second Party finds at any time that existing conditions require modification to the contract, the KIPDA Director of Social Services shall be notified immediately. Written requests for amendment shall be provided to KIPDA for consideration no later than March 31, 2009. Parties to the agreement may not assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement. The laws of the Commonwealth will govern this agreement. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasion shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

### **C. TERMINATION OR CANCELLATION**

Either party shall have the right to terminate or cancel this agreement for convenience at any time upon thirty (30) days written notice served upon the other party by certified or registered mail with return receipt requested. KIPDA may terminate or cancel this agreement immediately for cause upon written notice served upon the Second Party by registered mail with return receipt requested.

### **D. CONTRACT CONFORMANCE**

If the KIPDA Director of Social Services and the Executive Director determine that deliverables due under the contract resulting from the solicitation or procurement are not in conformance with the terms and conditions of the contract and the mutually agreed-upon project plan, the KIPDA Director of Social Services or Executive Director may request the Second Party to deliver assurances in the form of additional Second Party resources or corrective measures and demonstrate that other major schedules or services will not be affected. KIPDA shall determine the

quantity and the quality of the additional resources or corrective measures. Failure to comply may constitute default by the Second Party.

#### **E. REMEDIES FOR BREACH**

It is agreed by the parties that in the event of breach of contract by the Second Party, KIPDA or the Department for Aging and Independent Living may pursue any remedy available to it pursuant to this contract, or to the provisions of KRS Chapter 45A, or any remedy that is available to it at law. The remedies available to the division may be invoked without regard to the existence of any other available remedy, and may include the payment of any specified liquidated damages by the Second Party to the Division for compliance as provided for in this master agreement.

#### **F. ATTACHMENTS**

Attachments as referenced in this contract are incorporated into this contract and are binding on all parties. If an Attachment is in conflict with this contract and its contract clauses, the contract clauses shall prevail. If an Attachment is in conflict with an applicable law, regulation or policy, the law, regulation or policy shall prevail.

#### **G. FUNDING**

This contract is expressly conditioned on the availability of State and Federal funds allocated to KIPDA by the Cabinet for Health and Family Services and up to the amount awarded by KIPDA to the Second Party. KIPDA shall fund the delivery of services and supports and activities under the terms and conditions of this contract to the extent that the funding allocations specified are made available to KIPDA. The Second Party shall have no right of action against KIPDA or the Cabinet in the even that KIPDA is unable to perform its obligation under the contract as a result of suspension, termination, withdrawal or failure of funding to KIPDA or lack of sufficient funding to KIPDA for any activities or functions contained within the scope of this contract.

Other provisions of this contract notwithstanding, the Second Party agrees that if funds are not appropriated or are not otherwise made available to KIPDA for the purpose of making payments hereunder, then KIPDA shall be authorized to make payments to the extent possible and/or terminate this contract in accordance with Section V. (C). of this contract, provisions for termination without obligation for the payment of any cancellation or termination charges and without any other obligation or liability hereunder.

#### **H. ASSIGNMENT**

This contract shall be binding upon and inure to the benefit of the respective legal successors of the Parties to this contract. However, neither this

contract nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of KIPDA with approval of its Board of Directors.

**I. BANKRUPTCY**

In the event the Second Party becomes the subject debtor in a case pending under the Federal Bankruptcy Code, KIPDA's right to terminate this contract may be subject to the rights of a trustee in bankruptcy to assume or assign this contract. The trustee shall not have the right to assume or assign this contract unless the trustee:

- 1) promptly cures all defaults under this contract;
- 2) promptly compensates KIPDA for the monetary damages incurred as a result of such default;
- 3) provides adequate assurance of future performance, as determined by KIPDA.

**J. CONTRACTOR COOPERATION IN RELATED EFFORTS**

KIPDA may undertake or award other contracts for additional or related work, services, supplies, or commodities and the Second Party shall fully cooperate with such other contractors and KIPDA employees. The Second Party shall not commit or permit any act that will interfere with the performance of work by any other contractor or by KIPDA employees.

**K. SOVEREIGN IMMUNITY**

The parties to this contract expressly agree that no provision of this contract is in any way intended to constitute a waiver by KIPDA or the Commonwealth of any immunities from suit or from liability that KIPDA or the Commonwealth may have by operation of law.

**L. FORCE MAJEURE**

Neither party shall be liable for public utility performance (e.g. postal service, telephone or water company) or for the consequence of public utility non-performance. Events or conditions beyond the reasonable control of the Parties, such as natural disasters, fires, floods, elements, transportation crashes, or utility failures shall not be construed as non-performance, nor shall reductions be applied as a result of such events, provided that KIPDA shall have the right to obtain the necessary services in good faith any appropriate offset to the compensation payable under this contract. The Second Party shall cooperate and shall require that any subcontractor cooperate with KIPDA in such event. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must inform the other in writing with proof of receipt within five (5) business days of the existence of a Force Majeure event or otherwise waive this right as a defense.

**M. OBLIGATION OF GOOD FAITH**

Each party shall be obligated to act in good faith in the performance and enforcement of this obligations herein, and shall deal fairly, honestly and reasonably with the other party, having due regard for all relevant facts and circumstances.

**N. CODE OF ETHICS**

The Second Party and all professional personnel who may provide services under this contract or any subcontract with the Second Party shall be familiar with and abide by any and all code of ethics or conduct that has been established by national or regional association and is generally recognized as being applicable. Failure of the Second Party to abide by the applicable code of ethics shall result in the immediate termination of this contract.

**O. SERVICE DELIVERY REQUIREMENTS**

All services provided by the Second Party under the terms and conditions of this contract shall be delivered in accordance with:

- 1) All applicable Federal and State laws and regulations as they are currently in effect.
- 2) All commitments and assurances as set forth in all awards by the Cabinet and the RFP issued by KIPDA with respect to goals, strategies, funding, and outcomes made by KIPDA as required and contained in the Master Agreement to KIPDA by the Cabinet, the annual plan, RFP and planning documents submitted by the Second Party.
- 3) All final federally and State-funded grant award terms and conditions, including federal and state reporting and expenditure requirements, for any federally or state proposed project developed jointly by the Second Party and KIPDA.

**P. ENVIRONMENTAL TOBACCO SMOKE**

1. Public Law 103-227, Part C, Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994, requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18 if the services are funded by Federal programs either directly or through States or local government by Federal grant, master agreement, loan or loan guarantee;

2. The Second Party certifies that it will comply with the requirements of the Act. The Second Party further agrees that it will require the language of this certification be included in any sub-awards that contain provisions for children's services and that all sub-grantees shall certify accordingly.

**Q. ACCESS TO AND MAINTENANCE OF RECORDS**

The Second Party agrees that KIPDA, the Commonwealth of Kentucky, Cabinet for Health and Family Services, and/or the federal grantor agency, the Comptroller General of the United States, and/or the Kentucky Auditor of Public Accounts, and/or any of their duly authorized representatives or agents including independent auditors, shall have access to any books, documents, papers, and records of the Second Party or its subcontractors which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

The Second Party agrees to maintain all records pertaining to this contract for a period of not less than five (5) years after all matters pertaining to this contract (i.e. audit, settlement of audit exceptions, disputes) are resolved in accordance with applicable federal and/or state laws, regulations, and policies except as may otherwise be specified in this contract.

The Second Party agrees to maintain all records pertaining to this contract in accordance to Policies and Procedures specific to program and service areas. Client records shall be retained in a secure location in compliance with HIPAA with availability to access by necessary supervisory and program staff, KIPDA and its State or Federal grantors.

The Second Party agrees to retain client specific clinical records in a secured location for five (5) years after the last date of service and their subsequent destruction by shredding or burning in compliance with HIPAA.

**R. INFLUENCE ON PURCHASING AND SPECIFICATIONS**

The Second Party certifies that the Second Party will not attempt in any manner to influence any specifications to be restrictive in any way or respect, nor will he attempt in any way to influence any purchasing of services or commodities by KIPDA or the Commonwealth of Kentucky.

**S. CONFLICT-OF-INTEREST LAWS AND PRINCIPLES**

The Second Party hereby certifies by his signature hereinafter that he is legally entitled to enter into the subject contract with KIPDA and certifies that he is not and will not be violating either directly or indirectly any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390, 210.110, 210.990 (1), 11A.040 or any applicable statute) or principle by the performance of this contract.



**T. CHOICE OF LAW AND FORUM PROVISION**

All questions as to the execution, validity, interpretation and performance of this agreement shall be governed by the laws of the Commonwealth of Kentucky, subject to the jurisdiction of the Jefferson County Circuit Court.

**U. SEVERABILITY**

The terms and conditions of this contract are severable and the invalidity of one shall not effect the legality or enforceability of others set out herein.

**V. CONTRACT/PROPOSAL CONFLICT**

In the event the provisions of any proposal are in conflict with the terms of this contract, this contract shall prevail.

**W. SERVICE DELIVERY REQUIREMENTS**

All services provided by the Second Party under the terms and conditions of this contract shall be delivered in accordance with;

- 1) All applicable federal and state statutes and regulations as they are currently in effect.
- 2) All commitments and assurances as set forth in all KIPDA awards with respect to goals, strategies, funding and outcomes made by KIPDA as required by and contained in grant applications and planning documents to federal and state agencies and other agencies providing grant funding and in the resulting award notices from those agencies;
- 3) All final federally-funded grant award terms and conditions, including federal reporting and expenditure requirements, for any federally-funded proposed project developed by the Second Party and KIPDA and submitted to a federal agency.

**X. ROLES AND RESPONSIBILITIES FOR PROPOSED AND EXISTING STAFF**

The roles and responsibilities and the written qualifying criteria for all personnel to be employed under the scope of work for all projects funded under this contract, including any proposed employees under subcontract to the Second Party, shall be in compliance with State and Federal laws governing the distribution of funds and the performance of activities as set forth in the project in this contract. The Second Party shall maintain and make available, upon written request, documentation of all personnel policies and procedures that govern the recruitment, hiring and performance evaluation for all personnel funded under this contract. All employees hired by the Second Party or its subcontractors and funded under the terms and conditions of this contract shall have position descriptions which set out the

required qualifications, skills and knowledge required to complete the scope of work as set out under this contract.

**Y. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION, LOWER TIER COVERED TRANSACTION**

The Second Party hereby certifies the following by signing of this agreement:

1. That neither it nor its principals and/or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall submit an explanation to KIPDA.
3. The instructions for certification, which are an integral part of this certification, have been read and agreed to by the Second Party.

**Z. CERTIFICATION REGARDING DRUG FREE WORKPLACE**

The Second Party hereby certifies that it will, or will continue to provide a drug free workplace in accordance with 45 CFR part 82. The Second Party shall at a minimum:

- (a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited from the Second Party's workplace and specifying actions that will be taken against employees for violation of such prohibited.
- (b) Establish an ongoing drug free awareness program to inform employees about:
  1. The dangers of drug abuse in the workplace;
  2. The Second Party's policy of maintaining drug free workplace;
  3. Available drug counseling, rehabilitation and employee assistance programs.
  4. The penalties that may be imposed upon employees for drug abuse violation.

**AA. CERTIFICATION ON LOBBYING**

1. No State funds appropriated to the Second Party pursuant to this contract shall be used to influence, either directly or indirectly, the introduction or modification of any Federal or State legislation, or the outcomes of any Federal, State, or local election, referendum, or initiative.

2. In addition, for any payment involving Federal funds, the Second Party certifies, to the best of his or her knowledge and belief, that for the preceding contract period, if any, and for this current contract period:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the second party, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the second party shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying", in accordance with its instructions.
  - c. The second party shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontractors, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.
3. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

## **BB. CAMPAIGN FINANCE**

The Second Party certifies that neither he/she nor any member of his/her immediate family having an interest of ten percent (10%) or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056 (2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this

contract. The contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

#### **CC. VIOLATION OF TAX AND EMPLOYMENT LAWS**

1. KRS 45A.485 requires the Second Party to reveal to the Commonwealth, prior to the award of a master agreement, any final determination of a violation by the Second Party within the previous five (5) year period of the provisions of KRS Chapters 136, 139, 141, 337, 338, 2341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.
2. To comply with the provisions of KRS 45A.485, the Second Party shall report any such final determination(s) of violations(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination; the KRS violated, the date of the final determination, and the state agency which issued the final determination.
3. KRS 45A.485 also provides that, for the duration of any contract, the Second Party shall be in continuous compliance with the provisions of those statutes which apply to the Second Party's operations, and that the Second Party's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for cancellation of the contract and the Second Party's disqualification from eligibility for future contracts (state funded) for a period of two (2) years.
4. The Second Party agrees to comply with the Davis-Bacon Act, as amended (40 U.S.C. 276 a to a-7) and Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).

#### **DD. SERVICE DELIVERY**

All services shall be provided as agreed upon and described herein consistent with Federal or State Laws, Regulations, and policies or procedures outlined by KIPDA. **Services shall be available throughout the contract period, subject to availability of contract funds provided by KIPDA.** Careful planning and management of program funds and services must occur to facilitate the provision of services throughout the fiscal year. The first party must be notified immediately if utilization and projected utilization results in discontinuation of services prior to the end of the fiscal year.

## **EE. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA)**

If ARRA funds Public Law (111-5), have been awarded to the Second Party through this contract, all parties agree to comply with the terms and conditions contained herein. Further, all parties to receive these funds understand that the federal stimulus process is still evolving and that new requirements for ARRA compliance may still be forthcoming from the Federal Government and the Commonwealth of Kentucky. Accordingly, both parties specifically agree that both it and its subcontractors will comply with all such requirements during the contract period.

### **1. Availability of Funding**

Both parties agree that programs supported with temporary Federal funds made available by the American Recovery and Reinvestment Act (ARRA), P.L. 111-5, will not be continued with state financed appropriations once the temporary funds are expended.

### **2. Buy American Requirement**

Both parties agree that in accordance with ARRA, Section 1605, neither the party nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance or repair of a public building or public work unless all of the iron, steel and manufactured goods in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Second Party understands this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605. The funds awarded in this contract are only to be used toward the Title III-C meal program to support additional meals.

### **3. Conflicting Requirements**

To the extent that ARRA requirements conflict with the Commonwealth of Kentucky requirements, the ARRA requirements control.

### **4. False Claims Act**

Both parties agree that to promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subgrantee, subcontractor or other person who has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

### **5. Enforceability**

If either party or its subcontractor(s) fails to comply with all applicable federal and state requirements governing the use of ARRA funds, the Commonwealth of Kentucky may withhold or suspend, in whole or in part,

funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the Commonwealth of Kentucky under all applicable state and Federal laws.

#### **6. Inspection of Records**

The United States Comptroller General or its representative or the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 or his representative shall be permitted to: 1) examine any records that directly pertain to, and involve transactions relating to, this contract; and 2) interview any officer or employee of either party or its subcontractors regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

#### **7. Job Posting Requirements**

Section 1512 of the ARRA requires States, its grantees and subcontractors to the grantee receiving stimulus funds to report on jobs created and retained as a result of the stimulus funds are required to post jobs created and retained as a result of stimulus funds on the Commonwealth of Kentucky Job Bank at <https://e3.ky.gov>.

#### **8. Prohibition on Use of ARRA Funds**

None of the funds made available under ARRA may be used for casino or other gambling establishments, aquarium, zoo, golf course, swimming pools or similar projects.

#### **9. Reporting Requirements**

Pursuant to Section 1512 of the ARRA, State Agencies receiving ARRA funds must submit a report to the federal government no later than ten (10) calendar days after the end of each calendar quarter. To meet this requirement, the Second Party shall report to KIPDA, as applicable and requested, the information below no later than the 5<sup>th</sup> day of each month to meeting its reporting requirement to the Commonwealth. This report must contain the information outlined below:

- a. The total amount of ARRA funds received by the grantee during the reporting period;
- b. The amount of ARRA funds that were expended or obligated during the reporting period;
- c. A detailed list of projects or activities for which ARRA funds were expended, obligated, include:
  - i. The name of the project or activity
  - ii. A description of the project or activity
  - iii. An evaluation of the completion status of the project or activity and;
  - iv. An estimate of the number of jobs created and the number of jobs retained by the project or activity;

- d. For any subcontractor or subgrantee to the Commonwealth receiving equal to or greater than \$25,000:
  - i. The name of the entity receiving the subaward;
  - ii. The amount of the subaward;
  - iii. The transaction type;
  - iv. The North American Industry Classification System (NAICS) code or;
  - v. The Catalog of Federal Domestic Assistance (CFDA) number;
  - vi. Program source;
  - vii. An award title descriptive of the purpose of each funding action;
  - viii. The primary location of the subaward including the city, state, congressional district and country; and
  - ix. The location of the entity receiving the award;
  - x. A unique identifier of the entity receiving the sub-award and the parent entity of contractor/grantee should the entity be owned by another.
  - xi. The names and total compensation of the five most highly compensated officers of the company if it received; 1) 80% or more of its annual gross revenues in Federal Awards; and 2) \$25 million or more in annual gross revenue from Federal Awards.
- e. For any subcontracts or subgrants less than \$25,000 or to individuals, the information required in d. may be reported in aggregate and requires the certification of an authorized officer of the grantee that the information contained in the report is accurate.
- f. Submit any other information reasonably requested by the Commonwealth or required by State or Federal law or regulation.

**10. Segregation of Funds**

The grantee and its subcontractors agree that it shall segregate obligations and expenditures of ARRA funds from other funding. No part of funds made available under the ARRA, P.L. 111-5, may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA.

**11. Subrecipient Requirements**

KIPDA (grantee) assures that it shall include these standard terms and conditions, including this requirement, in any of its subcontracts or subgrants in connection with projects funded in whole or in part with funds available under the ARRA, P.L. 111-5.

**12. Wage Requirements**

The grantee, in accordance with Section 1606 of the ARRA, both it and its subcontractors shall fully comply, if applicable, with this section in that, notwithstanding any other provision of law, and in a manner consistent with other provisions of the ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. The Secretary of Labor's determination regarding the prevailing wages applicable in the Commonwealth of Kentucky are located at: <http://www.gpo.gov/davisbacon/ky.html> .

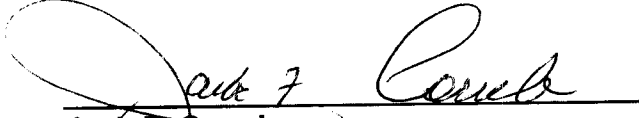
**13. Whistle Blower Protection**

The grantee agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal contractors or grantees of ARRA funds, including the Commonwealth of Kentucky, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of 1) gross mismanagement of a contract or grant relating to ARRA funds; 2) a gross waste of ARRA funds; 3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; 4) an abuse of authority related to implementation or use of ARRA funds; or 5) a violation of law, rule or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. The grantee agrees that it and its subcontractors shall post notice of the right and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.




The parties to this agreement hereby accept and approve the terms and conditions set forth in this agreement and all corresponding attachments.

**KENTUCKIANA REGIONAL PLANNING  
AND DEVELOPMENT**

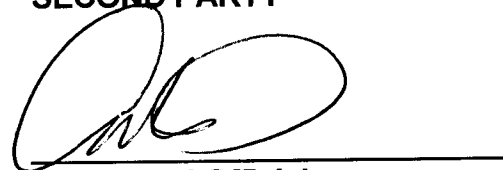
  
\_\_\_\_\_  
**Jack F. Couch**  
**Executive Director, KIPDA**

8/07/09  
Date:

**Approved as to Form & Legality**

  
\_\_\_\_\_  
**Frank F. Chuppe**  
**KIPDA Legal Counsel**

**SECOND PARTY**

  
\_\_\_\_\_  
**Authorized Official**

Adewale Troutman, MD Director

**Typed Name and Title**

July 20, 2009

**Date:**

June 29, 2009  
Date:

## **ATTACHMENT A**

**SCOPE OF WORK**  
**General Provisions**  
**JULY 1, 2009 - JUNE 30, 2010**

**I. General Provisions:**

- A. Louisville Jefferson County Metro Government, through the Department of Public Health and Wellness, has been awarded a contract to provide services during the period **July 1, 2009– June 30, 2010** through Title III-D of the Older Americans Act, as amended in 2006. The following scope of work describes the responsibilities of the second party as submitted and approved in planning information submitted to KIPDA. Continuation of funding is contingent upon the availability of funds, authorization to continue services and satisfactory performance of the services described herein.
- B. The second party agrees to adhere to the policies and procedures established by KIPDA and the Cabinet's Department for Aging and Independent Living (DAIL), and revisions thereto. DAIL has issued newly revised State Standard Operating Procedures (SOP). KIPDA will be required to update its policies in accordance with the State SOP. Once KIPDA updates and issues its revised policies to align with the State guidelines, the Second Party will be required to adhere to the revised policies. As required by its role in developing and issuing policies, KIPDA will provide for training of service provider staff in guiding the implementation of revised policy.
- C. KIPDA will require the Second Party to provide reports and data for purposes of reporting, planning, and evaluating the effectiveness of services monthly and/or quarterly. The Second Party agrees to submit accurate and timely information as requested. KIPDA reserves the right to request additional information and data as necessary to carry out its responsibility for administration and oversight of Social Service programs.
- D. A quality assurance program and method for evaluating the effectiveness of all services will be implemented using appropriate prescribed evidence based evaluation tools and client satisfaction surveys. The results of the evaluations shall be submitted to KIPDA upon the close of the fiscal year.
- E. Ensure provisions are made for the delivery of services in the event a disaster or emergency occurs. Emergency preparedness plans shall be implemented in accordance with organization procedures and any modifications to such plan(s) submitted to KIPDA. The organization's emergency planning shall make provisions for modified operations in the event of widespread illness or disease. The Second Party's emergency and disaster contingency plans shall include a provision for services, as appropriate, to meet the immediate needs of clients and implement an alternate plan to provide for services in the event of an emergency, illness, disaster or inclement weather.
- F. Both parties agree to abide by the provisions specified in the boiler plate of this contract as signed and all amendments hereto. Further, this contract shall include

approved proposal documents and information by reference if not specifically referenced within this contract and scope of work.

- G. All funding and payments are contingent upon the delivery of services as specified in this contract, satisfactory performance of services described, and timely submission of reports to KIPDA on a quarterly and/or monthly basis as dictated by KIPDA.
- H. A match requirement of 10% is necessary to receive payment for services. The Second Party will maintain sufficient records to document in-kind and cash match contributions. In-kind contributions are the value of donations of services, use of facilities, volunteer time, outside speakers or individuals conducting programs on behalf of the provider. Cash match is the amount contributed by the Second Party to support the cost of the program relevant to the funded services within this contract. Cash match may include: the value of staff time toward this project not covered by KIPDA funds and not used as match for other programs/services, the value of facilities or property used toward services provided under this contract if not covered by KIPDA funds and not used as match for other programs or services, or the cost of other items directly contributed by the Second Party to support the cost of this service or program. Match must be acquired through non-federal sources, cannot be used as match for other purposes, and must be a cost that would otherwise be allowable to the program under which it is reported. KIPDA may request source documentation to substantiate match reported.
- I. KIPDA will utilize the ServTracker electronic client data and reporting system during FY2010. During the term of this project, KIPDA will receive information from the Second Party related to client data, service information and participation on a monthly basis (no later than the 5<sup>th</sup> day of each month) at which time, data will be entered into the ServTracker database by KIPDA staff. The Second Party will receive a printed report of the service unit data posted. Client information shall be submitted on a regular basis in order to allow for set up of client records in the electronic data system. Monthly records will include the prescribed program attendance records for the specific evidence-based program.

## **II. Eligible Populations:**

- A. For purposes of receiving funds under this contract, preference shall be given to older individuals (age 60 and older) with the greatest economic or social need, with particular attention to low-income minority individuals. Services will be provided to low-income minority individuals in at least the same proportion as the population of low-income minority older individuals in the area served by the provider and make available evidence of services to low-income minority older individuals.
- B. Clients will receive services consistent with applicable Laws, Regulations and KIPDA policies and procedures relevant to services funded under this contract.
- C. The Second Party will address the service needs of low-income minority persons in its service area by utilizing the procedures submitted and approved by KIPDA. Should procedures, priorities or services change during the term of the contract, KIPDA shall be notified in writing prior to implementation of such changes.

D. In the event this agreement or services are terminated, the Second Party agrees to transfer client records and all data relevant to the delivery of services to KIPDA.

**SCOPE OF SERVICES**  
**Service Provisions and Guidelines**  
**Title III-D Health Promotion and Disease Prevention Services**  
**July 1, 2009 – June 30, 2010**

Title III-D Health Promotion and Disease Prevention activities and services will be conducted and reported to KIPDA Division of Social Services during the contract period. A minimum 10% match is required toward the overall cost of the program. The match will be a mix of in-kind match through program volunteers, and cash match (staff time and supplies) as designated by the service provider in the original proposal.

The Louisville Metro Public Health and Wellness Department will carry out the services described below; will report to KIPDA the units of service, number of unduplicated clients served, match and program income upon the conclusion of each funded service or monthly for on-going programs. The Second Party will employ an adequate number of qualified staff to ensure satisfactory conduct of the service and monitor quality of service delivered to clients.

**I. Health Promotion Service Definition: (One Unit =One (1) Contact)**

Providing programs/services designed to maintain or improve the health and well-being of older persons, including health screening, health promotion, and other health-related activities. Title III D Health Promotion shall include the provision of one or more of the following services: Community-based health promotion, provider involvement, collaboration, advocacy related to health issues, substance abuse prevention, medication misuse, mental health promotion, injury risk reduction, and cardiovascular health promotion.

**II. Risk Assessment and Injury Control Activity: Smoking Cessation**

- A. Plan and execute thirteen (13) week Cooper/Clayton Smoking Cessation support group programs targeting seniors for participation.
- B. Accept KIPDA clients into a variety of class locations and meeting times.
- C. Provide at least one-thousand three hundred (1300) units of service to at least one- hundred (100) seniors during this activity.
- D. The comprehensive behavior modification smoking cessation program shall use the Cooper/Clayton approved nicotine replacement products at not cost to senior participants (60 years and older).
- E. The Second party will schedule a Master Facilitator for Cooper/Clayton Method for Smoking Cessation to conduct the classes.
- F. The Second Party will create and execute a marketing campaign for this project to increase interest and encourage participation among older adults.

- G. Purchase five (5) Cooper Clayton Smoking Cessation DVD's for distribution to area Senior Centers, allowing groups of seniors who cannot attend classes; access to valuable information.

**III. Performance Measures**

- A. The Second Party will measure the effectiveness of the project by administering the usual Cooper/Clayton approved evaluation tools and submitting a summary report to KIPDA no later than July 7, 2010.

**IV. Outcomes**

- A. The Second Party will report success of the project to KIPDA. 90% of the participants responding to the program survey will indicate overall satisfaction with services and would recommend the program to others.
- B. 90% of program participants will report some change in their behavior as a result of the program and their participation.
- C. The older adult participants will attend more Cooper/Clayton Smoking Cessation classes when NRT is provided.

**VI. Facility and Operations:**

- A. The Second Party will conduct services in a manner that permits accessibility for seniors wishing to access services. The second party will comply with its equal opportunity and accessibility policies in the provision of services described herein. Accessibility includes but is not restricted to: parking area(s), ramps, rest rooms, hall & door widths, wheelchair access, and adequate lighting and non-slip surfaces.

**VII. Record Maintenance:**

- A. The Second Party will maintain records sufficient to report project completion and service units in the ServTracker data system. The data system will include information related to client demographics and service units on a monthly basis. KIPDA will utilize data contained in the system for completing necessary State and Federal reports. Additional information may be requested to validate the delivery of services, outcomes and program information. The following information shall be maintained and made available to KIPDA upon request:
- Record of service delivered;
  - Signature by individual receiving service;
  - Amount of time for services, both one time and recurring;
  - Age verification of individuals receiving services;
  - Record of in-kind and/or cash match items and value of match;
  - Program results (client survey and program performance data) submitted to KIPDA no later than July 7, 2010;

- Demographic information about clients accessing services submitted to KIPDA monthly to meet service requirements established in this contract.
- B. Technical assistance is available by KIPDA staff with regard to record maintenance, reporting, match, reporting units and completing monthly or quarterly reports. To obtain technical assistance, contact the Director of Social Services or KIPDA Planning staff responsible for oversight of the program.

## **VII. Billing and Reporting**

- A. **One Unit is defined as:** One (1) contact. The provider will bill KIPDA for each unit of service delivered per client receiving approved health promotion and disease prevention services. For each activity in which an individual participates, one unit of service is to be reported. (Example: 2 classes per week for 6 weeks x 10 participants = 120 units).

The following activities facilitate the delivery of services but shall not be reported as units of service:

- Review, update, or maintenance of records and general administration of services;
  - Staff training and preparation for services;
  - Program Management.
- B. KIPDA staff, based on information submitted by the Second Party will enter all client and service unit records into the electronic data and reporting system. Upon the close of the project, the final report will be printed for review and signature by the Second Party for payment of project services.
- C. Submit client data as prescribed by KIPDA on a regular basis as clients enter the program (age 60 and older clients only) and submit service participation records to KIPDA by the 5<sup>th</sup> day of each month for entry of service unit information into the electronic data system. The final billing report will be produced for payment upon the close of the project or the fiscal year end, whichever comes first.
- D. Submit the results of program evaluations in writing upon the conclusion of each project no later than 30 days upon the close of the project.



## **ATTACHMENT B**

**KIPDA SOCIAL SERVICE PROGRAMS  
BUDGET NARRATIVE  
July 1, 2009 – JUNE 30. 2010**

- I. **Definitions:** The following are definitions regarding financial billing and reporting for KIPDA Social Service Programs:

**Program Income:** Income received from donations, contributions or fund raisers as a result of services provided through funded program services. Income generate in excess of actual expenses is considered program income. Program income shall be utilized toward program expansion. Providers will be responsible for the tracking and reporting of program income for the purpose of expanding allowable program services.

**Match:** Match is a contribution toward the overall cost of a project and may be a third party in-kind contribution or cash. Program income may not be used as match. In-kind match is the value of a third party contribution and may include: volunteer time, supplies or items donated that are used for approved program activities, use of facilities provided by outside entities, or supplies donated for use in a program. Cash match is the amount of the contribution provided directly through the second party, such as: staff time, cash, use of facilities owned by the second party, supplies, materials, and other assistance toward the cost. All match must be through non-federal sources; not included as match toward other programs; necessary and reasonable to accomplish program objectives; allowable program cost; and verifiable.

**Unit:** A unit is the definition of a service or time for purposes of reporting and billing. A unit is defined differently by program. The definition of a unit shall be reviewed prior to reporting and billing KIPDA for units provided.

**Unduplicated Clients by Service:** The number of persons receiving services during any fiscal year per service. A client is not counted more than one time per year per service received. KIPDA will request the total number of unduplicated KIPDA clients served in a program per service for the year.

**Total Unduplicated Clients Served Per Year:** The total number of persons receiving services during the fiscal year. The unduplicated client count is a requirement for all programs. An individual is reported one time per fiscal year regardless of the number of services received.

II. **Submission of Information:**

The Second Party agrees to maintain records in a manner that will validate the delivery of services and eligible client information. Client and service data will be submitted to KIPDA for entry into the ServTracker data system on a regular basis. Service records will be submitted to KIPDA by the 5<sup>th</sup> day of each month for data entry by KIPDA and a final billing report to be produced upon the close of the project. Attachment B (Budget Summary) included in this attachment outlines the amount allocated for specific projects and activities.

- III. **Payment Process:** The Second Party agrees to conduct services as contracted for which payment will be made as specified in attachment B, budget summary for each project. One lump sum payment will be made upon completion of funded activities consistent with the scope of services approved.

To be eligible for payment, client and service data will be entered into ServTracker by KIPDA on a regular basis once records for data entry are submitted by the Second Party. KIPDA will produce a final agency statement (bill) from the data system for one lump sum payment in the amount appropried by KIPDA. Match will be provided by the Second Party through in-kind contributions and support of project costs by the Second Party. Once original signed invoice is received, payment will be released.

Match certification: The data system contains a reporting method for match and program income. After service data is entered, providers will complete the match and program income report indicating the amount, source of match or program income and service provided with the match or program income. Providers will be responsible for retaining source documentation to validate match upon request by KIPDA, monitors, Department for Aging and Independent Living.

**Monthly billing information will contain the following information:**

- Number of units provided per service (billing reports shall match units of service entered into electronic data system);
- Number of unduplicated clients served during the billing period reported, including a cumulative count for the fiscal year;
- Match reported for billing period and identify cash and in-kind match separately (organizations will be asked to identify match)
- Amount of program income collected from all sources.
- Deadline for submission of client and service records necessary for timely data entry. Providers will adhere to KIPDA policies for timeliness and accuracy of data. Adjustments may be permitted with justification for adjustment(s). KIPDA reserves the right to modify the billing schedule and data entry schedule as necessary to meet state, federal and other prescribed reporting schedules.

IV. **Provider Performance:**

Each program has performance outcomes and planned levels of performance outlined Attachment A of this contract. The planning and proposal information approved for each service will be monitored and outcomes compared to expected performance levels. In the event services are not delivered as scheduled in the program planning information, the provider will be contacted and a plan for corrective action developed and implemented within timeframes established by KIPDA. Providers are responsible for monitoring individual performance and notifying KIPDA of necessary changes to planning information. Performance (delivery of services) is expected to remain within 90% of the planned service levels (number of clients and units of service) each quarter for each program.

# **ATTACHMENT B** **BUDGET SUMMARY**

Louisville Metro Public Health and Wellness  
400 E. Gray Street  
Louisville, KY 40202

Page 1  
1-Jul-09

Title III-D Disease Prevention and Health Promotion Services - CFDA #93.046 Funded Services ( Note 1)	Total Units	# Undup. Clients	Gross Total Amount	Federal Funds	State Funds	Match	Match rate
Risk Assessment/Injury Control - Smoking Cess.	1,300	150	14,444.00	5,267.00	7,733.00	1,444.40	10%
EXPANSION PROJECT - III-B HEALTH PROMO.	1,300	150	14,444	5,267	7,733	1,444	10%

Note 1 Payment will be made in one lump sum total upon completion of each Title III-D Program activity, upon submission of an original signed invoice and match certification.